

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5845 of 1988

with

SPECIAL CIVIL APPLICATION NO. 6273 OF 1988

with

SPECIAL CIVIL APPLICATION NO. 6274 OF 1988

with

SPECIAL CIVIL APPLICATION NO. 6275 OF 1988

with

SPECIAL CIVIL APPLICATION NO. 8951 OF 1989

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? Yes  
to see the judgements? Yes  
to see the judgements? Yes  
to see the judgements? Yes  
to see the judgements? Yes  
to see the judgements? Yes  
to see the judgements? Yes

to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No @

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of India, 1950 of any Order made thereunder? No

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5. Whether it is to be circulated to the Civil Judge?  
No

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D S PATEL & CONSTRUCTION CO. THRO' DINESHCHANDRA B PARSAN

Versus

COMPETENT AUTHORITY & DEPUTY COLLECTOR (ULC)  
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Appearance:

Shri J.R. Nanavaty, Advocate, for the Petitioner  
(in all matters)

Shri A.G. Uraizee, Assistant Government Pleader,  
for the Respondents (in all matters)  
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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 18/10/96

#### ORAL JUDGEMENT

The order passed by the Competent Authority at Rajkot (respondent No.1 herein) under sec. 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Ceiling Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No.2 herein) under sec. 33 thereof is under challenge in each of these petitions. The petitioners of Special Civil Applications Nos. 6273 of 1988 and 6275 of 1988 (the second and the fourth petitions respectively for convenience) are partners in the petitioner-firm in each of the petitions bearing Special Civil Application No. 5845 of 1988 (the first petition for convenience) and Special Civil Application No. 6274 of 1988 (the third petition for convenience). The petitioner of the fourth petition is also a partner in the firm who is the petitioner in Special Civil Application No. 8951 of 1989 (the fifth petition for convenience). Certain lands are commonly involved in all these petitions. Common questions of law and fact are found arising in all these petitions. I have therefore thought it fit to dispose of all these petitions by this common judgment of mine.

2. The facts giving rise to all these petitions move in a narrow compass. The petitioner in each case filed the declaration in the prescribed form under sec. 6(1) of the Ceiling Act with respect to each one's holding within the urban agglomeration of Rajkot. Each form was duly processed by respondent No.1. After observing necessary formalities under sec. 8 of the Ceiling Act, by his order passed under sub-section (4) thereof,

respondent No.1 declared the holding of each petitioner to be in excess of the ceiling limit as mentioned in the order. A copy of the aforesaid order passed by respondent No.1 in each case is at Annexure A to each petition. It may be mentioned at this stage that no common order with respect to all the declarations was passed by respondent No.1. Each petitioner carried the matter in appeal before respondent No. 2 under sec. 33 of the Ceiling Act. In each case the appeal came to be dismissed. A copy of the appellate order is at Annexure B to each petition. Each petitioner has thereupon moved this Court by means of his each respective petition under art. 227 of the Constitution of India for questioning the correctness of the order at Annexure A to each petition as affirmed in appeal by the order at Annexure B thereto.

3. It is not necessary to take up each case separately. The reason therefor is quite simple. One parcel of land bearing survey No. 440 though plotted out in different sub-plots is practically common in all these cases. I have therefore thought it fit to deal with all these matters collectively.

4. So far as the petitioners of the first and the third petitions are concerned, the partnership in each case is not believed only on the ground that the deed of partnership was unregistered. I think that conclusion on the part of respondent No.1 cannot be sustained in law. There is no provision in the Indian Partnership Act, 1932 (the Partnership Act for brief) to the effect that non-registration of the partnership document would result in disbelieving of the existence of the partnership itself. It appears that respondent No.1 entertained an erroneous impression based on sec. 69 thereof. It would bar a suit by the partnership firm with respect to the claims mentioned therein if it is unregistered. The aforesaid statutory provision does not render any partnership without existence if the partnership document is not registered. That conclusion of respondent No.1 as reflected in the order at Annexure A to the first and the third petitions cannot be sustained in law.

5. It would be a trite law to say that, if the partnership firm would be entitled to a separate unit under the Ceiling Act, the share of a partner in the unit given to the partnership firm will have certainly to be included in the individual holding of the partner in view of sec. 4(5) of the Ceiling Act.

6. It transpires from the impugned order at Annexure

A to the second and the fourth petitions that certain constructed properties have been included in the holding of the respective petitioner contrary to the ruling of the Supreme Court in the case of Smt. Meera Gupta v. State of West Bengal and others reported in AIR 1992 SC 1567. If the constructed properties are found in existence prior to coming into force of the Ceiling Act and if their construction is authorised, the constructed area will have to be excluded from the holding of the respective land-holder in view of the aforesaid binding ruling of the Supreme Court. It appears that neither respondent No.1 nor respondent No. 2 has applied his mind from this angle presumably because the aforesaid binding ruling of the Supreme Court saw the light of the day only some time in 1992 and the cases of the respective land-holders involved in all these petitions were decided prior thereto. However, since the law declared by the Supreme Court is always retrospective in operation unless specifically made prospective in operation, the conclusion for including in the holding of the respective land-holder the constructed properties if found in existence prior to coming into force of the Act and if found to have been constructed in an authorised manner cannot be sustained in law.

7. It transpires from the evidence on record that certain lands involved in the fourth and the fifth petitions were agricultural lands. If they were so prior to coming into operation of the Ceiling Act and if in the master plan they are shown in the agricultural zone and if agricultural operations were in fact carried on therein on the date of coming into force of the Ceiling Act, they will have to be excluded in view of the binding ruling of the Supreme Court in the case of Smt. Atia Mohammadi Begum v. State of U.P. and others reported in AIR 1993 SC 2465. This aspect of the case has also not been considered by both the authorities below.

8. As rightly submitted by learned Assistant Government Pleader Shri Uraizee for the respondents, the factual position for the purpose of applicability of the aforesaid binding rulings of the Supreme Court will have to be ascertained and that can best be ascertained by respondent No.1 herein. The matters will have to be remanded to respondent No. 1 for restoration of the proceedings to file in each case and for his fresh decision according to law in the light of the law prevalent at the relevant time with respect to the factual position to be ascertained as indicated in this judgment. The impugned orders at Annexures A and B to each petition will have therefore to be set aside for the

purpose.

9. Learned Assistant Government Pleader Shri Uraizee for the respondents has brought to my notice that in practically all cases the notification under sec. 10(3) of the Ceiling Act was issued followed by the notice under sec. 10(5) thereof. Besides, runs the submission of learned Assistant Government Pleader Shri Uraizee for the respondents, the possession of the surplus land in the cases of the second and the fifth petitions has also been taken over. In that view of the matter, runs the submission of learned Assistant Government Pleader Shri Uraizee for the respondents, the second and the fifth petitions need not be entertained as the effect of the notification under sec. 10(3) of the Ceiling Act would be to vest the surplus land in the State Government free from all encumbrances. As against this, learned Advocate Shri Nanavaty for the petitioners in the aforesaid two petitions has submitted that the aforesaid notifications inter alia under sec. 10(3) of the Ceiling Act were issued during the pendency of appeal and in one case during the pendency of the respective petition before this Court and the said notifications will have to be ignored in view of the ruling of this Court in the case of Dahyabhai Manorbhai Patel v. The Competent Authority and Additional Collector, Unit No.2, Vadodara and another reported in 1987(2) 28(2) G.L.R. 1396.

10. It becomes clear from the synopsis supplied by and on behalf of the respondents in each case that the notifications under sec. 10(3) of the Ceiling Act were issued and published in each case during the pendency of appeal. In the aforesaid ruling of this Court in the case of Dahyabhai Manorbhai Patel (supra) this Court has taken a view that issue of the notification under sec. 10(3) thereof would not result in loss of the right of appeal inhering in the land-holder under sec. 33 thereof.

11. Sitting as a single Judge, the aforesaid ruling of this Court is binding to me. Even otherwise, I am in respectful agreement therewith. Since the appeal was pending in each case, the notification under sec. 10(3) of the Act issued during its pendency would lose its importance or significance. It will have just to be ignored. No further action pursuant thereto could have been taken even after dismissal of the appeal for a reasonable period to enable the aggrieved land-holder to invoke the extra-ordinary jurisdiction of this Court under articles 226 and/or 227 of the Constitution of India. Applying the principle of law enunciated in the

aforesaid ruling of this Court in the case of Dahyabhai Manorbhai Patel (supra), the right of invoking the extra-ordinary jurisdiction of this Court under art. 226 and/or 227 of the Constitution of India within a reasonable period from the date of the impugned orders would not be lost by issuing of the notification under sec. 10(3) of the Ceiling Act or any action taken pursuant thereto if issued during the pendency of appeal. In that view of the matter, even if possession pursuant to the notification under sec. 10(3) of the Ceiling Act is taken, it will be of no consequence.

12. I am told by learned Advocate Shri Nanavaty for the petitioner of the fifth petition that physical possession of the surplus land has not been taken over from the concerned land-holder. So far as the second petition is concerned, learned Advocate Shri Nanavaty is not in a position to dispute taking over of the physical possession of the surplus land. Learned Assistant Government Pleader Shri Uraizee on instructions from some official from the office of respondent No.1 herein present in the court-room states that the land of which possession is taken over is not allotted to any one under sec. 23 of the Ceiling Act. In that view of the matter, possession can be returned to the land-holder if his holding is not found to be in excess of the ceiling limit.

13. At this stage it may also be mentioned that one more grievance voiced by learned Advocate Shri Nanavaty for the petitioner in each case is that the land involved in each petition was an ancestral land in the hands of the holder thereof. It would be open to the land-holder in each case to canvass that contention before respondent No.1 when the case is taken up for hearing after remand. That contention may be dealt with according to law in the light of the material on record which the respective land-holder may be permitted to bring if it has not already been brought on record.

14. In the result, each petition is accepted. The impugned order at Annexure A to each petition as affirmed in appeal by the appellate order at Annexure B to each petition is quashed and set aside. Each matter is remanded to the Competent Authority at Rajkot for restoration of the proceedings to file and for his fresh decision according to law in the light of this judgment of mine. Rule issued on each petition is accordingly made absolute to the aforesaid extent with no order as to costs.

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